

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6793

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

HERMAN WOODEN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Chief District Judge. (CR-90-18-A)

Submitted: September 22, 2004

Decided: October 14, 2004

Before MICHAEL and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Herman Wooden, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Herman Wooden seeks to appeal the district court's order denying reconsideration of his motion for modification of his sentence under 18 U.S.C. § 3582(c)(2). We dismiss the appeal for lack of jurisdiction.

Because a § 3582 motion is criminal in nature, Wooden had ten days from the entry of the district court's judgment to note a timely appeal. See Fed. R. App. P. 4(b)(1)(A); United States v. Alvarez, 210 F.3d 309, 310 (5th Cir. 2000). The district court can extend the appeal period under Rule 4(b)(4) upon a showing of excusable neglect or good cause. See United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985). However, the district court may not extend the appeal period beyond the forty days provided in Rule 4(b). Fed. R. App. P. 26(b)(1); see United States v. Raynor, 939 F.2d 191, 196 (4th Cir. 1991).

The district court entered its order on February 23, 2004. Accordingly, the ten-day appeal period expired on March 8, 2004, see Fed. R. App. P. 26(a)(2) (excluding intermediate Saturdays and Sundays from 10-day period), and the thirty-day excusable neglect period expired on April 5, 2004. Because Wooden did not file his notice of appeal until April 9, 2004, at the earliest,* we do not have jurisdiction to consider the merits of

*Wooden's notice of appeal is dated April 9, 2004, and was filed by the district court clerk on April 16, 2004. Thus, even according Wooden the benefit of the earlier date, see Fed. R. App.

the appeal. We therefore deny Wooden's motion for appointment of counsel and dismiss the appeal as untimely. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

P. 4(c)(1), his notice of appeal was untimely.